

**SUMMARY OF  
DELTA PROTECTION COMMISSION'S APPEAL PROCESS**  
(For details, see the attached statutory and regulatory provisions.)<sup>1/</sup>

**Who May File?** “Any person” who is “aggrieved by a local government or other local agency in implementing the resource management plan.” (Public Resources Code § 29770)

**Primary Ground:** “[A]n action, as to land located exclusively within the primary zone, is inconsistent with the\* \* \* resource management plan.” (§ 29770)

**Filing Deadline:** The appeal must be filed with the commission within 10 calendar days of the local government’s final action. (14 CCR 20001)<sup>2/</sup>

**Effect of Appeal:** Stays local action. (§29771; 14 CCR 20005)

**Hearing’s Two Step Structure and Timing:**

- 1) At the next available meeting (which must be within 45 days of filing) (14 CCR 20008):
  - Staff presents an oral or written recommendation<sup>3/</sup> concerning
    - i) the Commission's jurisdiction; and
    - ii) whether the appeal raises an appealable issue.
  - The Commission, by majority vote, determines whether it has jurisdiction, and whether the appeal raises an appealable issue.
- 2) If the Commission determines that it has jurisdiction and the issue is appealable, it hears the merits at the “next available, regularly-scheduled meeting.” (14 CCR 20009)

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1. This summary was prepared by Supervising Deputy Attorney General Daniel L. Siegel for the Delta Protection Commission’s meeting on March 23, 2006. To the extent that there is any conflict between this summary and the attached statutory and regulatory provisions, those provisions control.

2. Staff determines if appeal is complete, stamps it “filed” and indicates filing date. (14 CCR 20002.) Within 5 working days, staff posts and mails specified notices. (14 CCR 20004.)

3. If written, it must be “made available for public inspection at least five working days prior to the hearing.” (14 CCR 20008(c).)

**Merit Hearing:**

- Review is de novo. (14 CCR 20006)
- The hearing does not have to follow technical evidentiary rules. (14 CCR 20010)

**Ex parte communications:**

- Decision must be based on the hearing record.
- Prior to voting, commissioners must disclose any oral or written communications they receive outside of the formal hearing process. (14 CCR 200013(b))

**Commission's Hearing Decision:**

- Deny appeal or remand to local government for reconsideration. (§29771)
- Decision is by majority vote. (14 CCR 200011(a))
- Final unless Commission directs written findings be prepared, in which case staff prepares findings and presents them at the next regularly scheduled meeting. The Chair may extend that deadline in appropriate circumstances. (14 CCR 200011(b) & (c))

**If Remanded:**

The local action is not effective. (§29771)

To become effective, the local government must resubmit the matter to the Commission, and the Commission must find in writing that the action is consistent with

- the resource management plan
- approved parts of local government general plans that implement the resource management plan, and
- the Delta Protection Act. (§29771)

**Judicial review:** "An aggrieved person" has 60 days from the Commission's final decision to seek judicial review. (§29772)

# **STATUTORY PROVISIONS CONCERNING APPEALS TO THE DELTA PROTECTION COMMISSION**

(All are sections of the Public Resources Code.)

## **§ 29770. Appeal to commission**

(a) Any person who is aggrieved by any action taken by a local government or other local agency in implementing the resource management plan, or otherwise taken pursuant to this division, may file an appeal with the commission. The ground for an appeal and the commission consideration of an appeal shall be that an action, as to land located exclusively within the primary zone, is inconsistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, or this division. The appeal shall be heard by the commission within 60 days from the date of the filing of the appeal, unless the commission, either itself or by delegation to the executive director, determines that the issue raised on appeal is not within the commission's jurisdiction or does not raise an appealable issue.

(b) The commission shall, by regulation, adopt administrative procedures governing those appeals.

## **§ 29720.5. "Aggrieved person"**

"Aggrieved person" has the same meaning as defined in Section 29117.

## **§ 29117. "Person"; "Aggrieved person"**

(a) "Person" means any individual, organization, partnership, limited liability company, or other business association or corporation, including any utility; and the federal government, the state, any local government, or any district, or any agency thereof.

(b) "Aggrieved person" means any person who, in person or through a representative, appeared at a public hearing of the local government in connection with the decision made or action appealed; or who, by other appropriate means prior to a hearing, informed the local government of the nature of his or her concerns; or who for good cause was unable to do either of the foregoing. "Aggrieved person" includes the applicant for a permit; and, with respect to the approval of the local protection program, or any component thereof, any affected local government.

## **§ 29771. Commission action on appeal**

After a hearing on an appealed action, the commission shall either deny the appeal or remand the matter to the local government or local agency for reconsideration, after making specific findings. Upon remand, the local government or local agency may modify the appealed action and resubmit the matter for review to the commission. A proposed action appealed pursuant to this section shall not be effective until the commission has adopted written findings, based on substantial evidence in the record, that the action is consistent with the resource management plan, the approved portions of local government general plans that implement the resource management plan, and this division.

## **§ 29772. Judicial review**

An aggrieved person may seek judicial review of any action taken by the commission in adopting the resource management plan or any action taken by a local government or other local agency that is appealable pursuant to subdivision (a) of Section 29770, by filing a petition for writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure within 60 days from the date that the commission action was taken or, if appealed to the commission, within 60 days from the final decision of the commission on the appeal.

# **DELTA PROTECTION COMMISSION'S REGULATIONS CONCERNING APPEALS**

## **Title 14. Natural Resources**

### **Division 9. Delta Protection Commission**

#### **Chapter 1. Commission Hearing Procedures**

#### **§ 20000. Purpose**

These regulations establish the procedures by which the Delta Protection Commission processes, considers and resolves appeals from local governmental decisions which are brought before the Commission under the provisions of Public Resources Code § § 29770-29772.

#### **§ 20001. Time for Appeal**

A person aggrieved by any action taken by a local government which falls within the criteria established in Public Resources Code § 29970(a) may file an appeal with the Commission within 10 calendar days of the date on which the pertinent local government has taken final action concerning the matter being appealed. For purposes of this section, "final action" means a decision of the local government that is final and not subject to any further review by any member or decision-making body of that local government.

#### **§ 20002. Contents and Filing of Appeal**

An appeal brought under these regulations shall be in writing and shall contain at least the following information:

- a) the name and address of the appellant;
- b) the name and address of the third party, if any, whose proposal is the subject of the appeal and the local government action being appealed;
- c) a description of the proposal or development that is the subject of the local government action being appealed;
- d) the identity of the local governmental body whose action is being appealed;
- e) the specific ground(s) for appeal; and
- f) a detailed statement of facts on which the appeal is based.

The appeal shall be considered "filed" with the Commission when the original letter from the appellant is received, determined by staff to contain all of the information listed above, and stamped "Filed" by the Commission with the date of filing indicated.

#### **§ 20003. Grounds for Appeal**

The grounds for appeal of a local government action shall be limited to those specified in Public Resources Code § 29770(a), i.e., that such action is inconsistent with the Commission's Resource Management Plan, those portions of a local government's general plan that implement the Resources Management Plan, or the Delta Protection Act.

#### **§ 20004. Commission Procedures Upon Receipt of Appeal**

Within five working days of receipt of an appeal, the executive director of the Commission shall:

- a) post a notice and brief description of the appeal in a conspicuous location in the Commission office;
- b) mail to the affected local government a copy of the same notice and brief description, together with a copy of the appeal document(s) filed with the Commission.
- c) mail to the affected third party, if any, identified in § 20002(b) above a copy of the notice and brief description, together with a copy of the appeal document(s) filed with the Commission; and
- d) mail copies of the notice and brief description to each member of the Commission.

#### **§ 20005. Effect of Appeal**

Upon receipt of a timely appeal, the executive director shall notify the affected local government and the third party, if any, identified in § 20002(b) above that the operation and effect of the local government's action has been stayed pending Commission action on the appeal as required by Public Resources Code § 29771. Upon receipt of an appeal, the executive director shall request that the affected local agency make available for inspection and copying all relevant documents and materials used by the local government in its consideration of the action being appealed. This information shall include the names and addresses of all persons who submitted written comments or testified before the local government regarding the matter being appealed. If the Commission fails to obtain access to the documents and materials on a timely basis, the Commission shall commence a hearing on the appeal as provided in § 20008, below, but shall leave the hearing open until all such relevant documents and materials are received and reviewed by the Commission.

#### **§ 20006. De Novo Review**

The Commission shall conduct a de novo review of the local government action being reviewed.

#### **§ 20007. Standard of Review**

The standard of Commission review of any appealable local government action shall be whether that action meets the requirements of Public Resources Code § 29770(a).

#### **§ 20008. Hearing on Commission Jurisdiction/Appealable Issue**

- a) The Commission's appellate review shall be conducted in a hearing composed of two sequential phases, held in accordance with the provisions of Public Resources Code § 29770. At the first available Commission meeting following filing of an appeal, but in no event more than 45 days thereafter, the Commission shall conduct an initial hearing and determine by majority vote whether the appeal;
  - i) raises issues not within the Commission's jurisdiction; or
  - ii) does not raise an appealable issue.

b) If the Commission finds either that the appeal raises issues outside the Commission's jurisdiction or that it fails to raise an appealable issue, the Commission shall dismiss the appeal. That dismissal constitutes final Commission action from which judicial review may be taken under Public Resources Code § 29772.

c) The Commission shall make the determination set forth in subsection (a) only after Commission staff has presented a recommendation, orally or in writing, on the questions presented. Any written staff recommendation is a public record which shall be made available for public inspection at least five working days prior to the hearing.

#### **§ 20009. Hearing on Merits of Appeal**

Unless the Commission dismisses the appeal for the reasons set forth above, the Commission shall proceed to hear the appeal on its merits at the Commission's next available, regularly-scheduled meeting.

#### **§ 20010. Evidence and Hearing Procedures**

a) Hearings conducted by the Commission under these regulations shall be conducted in a manner deemed most suitable to ensure fundamental fairness to all parties concerned, and with a view toward securing all relevant information and material necessary to render a decision without unreasonable delay.

b) Hearings need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be considered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a court proceeding. Unduly repetitious or irrelevant evidence shall be excluded upon order of the Commission or its chairperson.

c) Evidence before the Commission includes, but is not limited to, the record before the local government whose action is being appealed. Except in unusual circumstances, the record will not include a transcript of the local government proceedings unless provided by a party to the proceedings.

d) Any interested person may testify before the Commission regarding an appeal. Speakers' presentation shall be to the point and shall be as brief as possible. Visual and other materials may be used as appropriate. The Commission may establish reasonable time limits for presentation(s); such time limits shall be made known to all affected persons prior to any hearing. Where speakers use or submit to the Commission visual or other materials, such materials shall become part of the hearing record and shall be identified and maintained as such. Speakers may substitute reproductions of models or other large materials but shall agree to make the originals available upon request of the executive director.

e) Commissioners may ask questions of the appellant, the affected local government's representative(s), any affected third party(s) appearing at the hearing, staff or the Commission's legal counsel. Questioning of speakers at the hearing by other persons shall not be permitted except by permission of the Chairperson.

f) Interested persons may submit written comments concerning an appeal. Any such comments will be considered by the Commission if they are received by the Commission at or before the hearing on the appeal.

**§ 20011. Commission Decision on Merits of Appeal**

a) The Commission's determination on the merits of an appeal brought under Public Resources Code § 29770 shall be by majority vote.

b) The Commission's decision shall be deemed final upon the taking of the vote, unless the Commission directs that written findings be prepared for consideration by the Commission on a subsequent date. If such findings are prepared, the Commission action shall be deemed final upon the date the findings are adopted by the Commission.

c) Written Commission findings, if any, shall be prepared by staff and presented to the Commission for consideration at the next regularly-scheduled meeting following the Commission's vote on the merits of the appeal. The time for preparation of findings may be extended by the Chair in appropriate circumstances.

**§ 20012. Notification of Commission Action**

The Commission shall notify the local government, the appellant and the affected third party, if any, identified in § 20002(b) of each formal action taking by the Commission under §§ 20008 and 20009. The notification shall be transmitted by the Executive Director within ten working days of the Commission's formal action.

**§ 20013. Ex Parte Contacts**

a) Decisions of the Commission on appeals heard under Public Resources Code § 29770 shall be based strictly on the evidence presented during the public hearing. The Commission shall not rely upon any communications, reports, staff memoranda, or other materials prepared in connection with a particular appeal unless those materials are made a part of the hearing record.

b) If commissioners receive written or oral communications from any person concerning a pending appeal outside the formal hearing process, they shall disclose, on the record and prior to a Commission vote on the appeal, both the existence and substance of the communications.